

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re

Chapter 9

CITY OF DETROIT, MICHIGAN,

Case No. 13-53846

Debtor.

Hon. Steven W. Rhodes

**RESPONSE OF WALTER SWIFT AND DWAYNE PROVIENCE,
INTERESTED PARTIES, IN SUPPORT OF MOTION OF PREPETITION
§1983 CLAIMANTS FOR ENTRY OF ORDER DIRECTING APPOINTMENT
OF COMMITTEE OF 42 U.S.C. §1983 CLAIMANTS [DOC. #2476]**

Now come WALTER SWIFT (C.A. #10-12911) and DWAYNE PROVIENCE (C.A. #10-11719), (hereafter “Petitioners”), both Plaintiffs in federal prepetition causes of action arising under 42 U.S.C. §1983, and both interested parties in the instant matter, and submit this *Response* in support of *Motion of Prepetition 42 U.S.C. § 1983 Claimants, Pursuant to Section 1102(A)(2) of the Bankruptcy Code, for Entry of an Order Directing the Appointment of A Committee of Prepetition 42 U.S.C. § 1983 Claimants* [Doc. #2476], pursuant to the *Notice of Motion* [Doc. #2526], filed with this Court on January 21, 2014. These Petitioners ask that this Court grant any and all appropriate relief requested by the moving parties (hereafter, “Prepetition §1983 Claimants”) [Doc #2476], and

incorporate by reference the authority, argumentation and reasoning set forth therein, as well as the following additional considerations:

1. In September 1982, Walter Swift, a Petitioner herein, was wrongfully convicted of First Degree Criminal Sexual Conduct.

2. In February 2001, Dwayne Provience, another Petitioner herein, was wrongfully convicted of Second Degree Murder and Felony Firearm.

3. As a result, both of these Petitioners spent numerous years wrongfully incarcerated as prisoners of the Michigan Department of Corrections, to-wit:

a. Swift – 26-27 years;

b. Provience – 8-9 years.

4. These convictions were secured due to the actions of several individual Detroit police officers, as well as to the usages, customs, practices and policies of the Debtor City of Detroit, through its Police Department that, among other things, hid, concealed and failed to disclose evidence that was not only exculpatory but which also strongly evidenced the Petitioners' innocence of the respective crimes for which they had been wrongly convicted, all in violation of their protected rights under the 4th and 14th Amendments to the United States Constitution.

5. Both Petitioners herein filed their civil rights claims pursuant to 42 U.S.C. §1983 following their respective exonerations and releases from custody, all prior to the filing this Bankruptcy petition, to-wit:

a. Swift v. City of Detroit, et al, C.A. #10-12911, filed on or about May 10, 2010;

b. Provience v. City of Detroit, et al, C.A.#10-11719, filed on or about April 28, 2010.

6. Thus, the wrongful and unconstitutional misdeeds of the Debtor and its employees and agents has caused these Petitioners not only clear injury and damage due to the years of wrongful incarceration following their wrongful conviction; it has, as well, resulted in prejudicial delay, in that through the ongoing post-conviction acts of concealment by the Debtor's employees and agents acting pursuant to the Debtor's customs, policies and/or practices, Petitioners were delayed in their ability to file and litigate their respective civil rights actions until a time period which has resulted in their claims now being stayed and in other ways adversely affected by the Debtor's filing under Chapter 9 of the Bankruptcy Code.

7. In this respect, these Petitioners bring their perspective and concerns to this Court regarding the effect and impact of years of accumulated and unnecessary delay on the manner, timing and prioritization of their claims, *vis-à-vis* the claims of other creditors.

8. Further, these Petitioners point out and ask this Court to consider an issue not raised by the Prepetition §1983 Claimants, to-wit: that there is a serious issue regarding the constitutionality of the Debtor's Chapter 9 filing, as it may affect

claims brought under the Fourteenth Amendment of the United States Constitution, pursuant to 42 U.S.C. §1983.

9. The reasons supporting this contention are extensively identified and briefed by attorneys representing these Petitioners in a series of pleadings previously filed in this Bankruptcy action by Petitioner Deborah Ryan [Doc #819; Doc #819-4, Ex.3]. Due to the constitutional issues raised therein – i.e. that any infringement on the constitutional rights of §1983 plaintiffs, including those imposed pursuant to Chapter 9 of the Bankruptcy Code, are unconstitutional. It is critical that these concerns are preserved by this Court through the establishment of a “42 U.S.C. §1983 Claimant Committee,” as proposed by the Prepetition §1983 Claimants.

WHEREFORE, for the reasons stated above, Petitioners herein request that this Court provide the following relief:

A. Grant the relief requested by the Prepetition §1983 Claimants’ *Motion*, [Doc. #2476], with the following caveat:

1. That with respect to Paragraph 24(a) of the Prepetition §1983 Claimants’ *Motion* [Doc. #2476] -- pertaining to the appointment of the 42 U.S.C. §1983 Committee and the “Selection Procedures” set forth therein -- in addition to the Prepetition §1983 Claimants who filed that *Motion*, counsel for Petitioners herein (i.e. the law firms of Goodman & Hurwitz, P.C. and Olsman, Mueller, Wallace & MacKenzie, P.C., of counsel), shall also participate in the “Selection Procedures”;

B. That in granting the relief requested by Prepetition §1983 Claimants, the Court shall also take into account the additional concerns set forth by Petitioners herein, specifically:

1. The prejudicial impact of the wrongful delay created by the Debtor's wrongdoing; and
2. The constitutional concerns articulated by these Petitioners and as set forth in detail in Docket #s819and 819-4, Ex.3.

Respectfully submitted,

GOODMAN & HURWITZ, P.C.

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Dated: January 29, 2014

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2014, I electronically filed the above Response of Walter Swift and Dwayne Provience, Interested Parties, In Support of *Motion Of Prepetition §1983 Claimants For Entry Of Order Directing Appointment Of Committee Of 42 U.S.C. §1983 Claimants* [Doc. #2476] with the Clerk of the Court using the ECF system which will send notification of such filing to ECF participants in this matter.

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